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No. 33

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

CHARLES DOWD BOX CO., INC.,

Petitioner,

v.

JOHN F. COURTNEY, *et al*, as they fairly represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF FOR RESPONDENTS

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*ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS**

BRIEF FOR RESPONDENTS

STATEMENT OF THE CASE

The United Steelworkers of America, an international labor organization (hereinafter referred to as the union), was the collective bargaining representative of the production and maintenance employees of Charles Dowd Box Company, the petitioner herein, during all times relevant to this

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* We so caption the case since certiorari was sought and granted to the Superior Court. 365 U.S. 809. It is clear, however, that it is the judgment of the Supreme Judicial Court of Massachusetts which is being reviewed. In the light of *Cole v. Violette*, 319 U.S. 581 (1943), it may be that the petition should have requested certiorari to that court. *But cf. Testa* v. *Katt*, 330 U.S. 386 (1947). In any event, the petition was timely (R. 68, 73).

case. Local 5158 was the union's local affiliate in which petitioner's employees were organized.

A collective bargaining agreement between the union and the company was executed in June, 1955, and expired according to its terms on May 18, 1957. (R. 45).

In the early part of 1957 the union submitted to the company certain proposals for a new agreement. Thereupon, negotiations were commenced between the respective negotiating committees of the parties. After a number of negotiating sessions, a "Stipulation" was signed on May 21, in which the parties agreed to extend their prior agreement to November 19, 1958, with the following changes:

"1. 13 cents wage increase
2. One additional holiday
3. Elimination of the rate range within 90 days
4. Vacations to be computed on an anniversary basis." (R. 6).

This Stipulation was signed on behalf of the union by the president of the Local and a staff representative of the International, who were the two ranking members of the union negotiating committee, and for the company by David Dowd, who was a member of the company's negotiating team as well as Vice President in charge of production, a member of the Board of Directors and one of the company's four principal stockholders. (R. 45). It was ratified by the members of the Local that evening. (R. 46).

On May 28 a meeting was held between representatives of the respective negotiating committees at which the final language of the new agreement was drafted. (R. 46). That same day, the company posted a notice at the plant announcing that the "newly negotiated wage increases" would be paid beginning June 7, and would be applied retroactively as of May 20. (R. 7).

On June 5, another notice was posted by the company, stating the following:

> "Although the Contract has not yet been presented for review and signature, to show good faith on the part of Management, the negotiated increase of thirteen (13) cents will be included in this week's pay.
>
> "After the Contract has been formally signed, the increase for the prior weeks will be retroactive." (R. 54).

Shortly thereafter, the company put the terms of the new agreement into effect. It paid the wage increases retroactive to May 20, and it honored all the other provisions as well. (R. 46).

On August 2, David Dowd signed and delivered a copy of the completed agreement to the union. It was signed by the Local Union officers on August 12, and then sent on to the International officers for their signature. (R. 46).

On August 12, Courtney, the president of the Local, was informed by a company representative that David Dowd no longer had anything to do with labor relations. (R. 46). The company continued to honor the agreement, however, and, indeed, on August 19 Mary Dowd, the president of the company, met with union officials and worked out certain details pertaining to the implementation of the portion of the agreement dealing with the elimination of "rate ranges." (R. 46).

On August 30, 1957, the company posted the following notice:

> "As indicated in the notice of June 5th, that Management had not signed the proposed contract, but willingly made wage adjustments to show good faith until final clarification of the provisions of the contract were mutually understood.
>
> "We regret to advise at this time, that Management is not in full agreement with the provisions of the in-

strument as proposed and will not make further adjustments until mutually agreed upon between the Company and the Union." (R. 55).

This was followed by another notice on September 4, in which the company announced that it was returning "to the rates in effect as of May 18, 1957." (R. 39-40).

On September 9, the present action was commenced. A bill in equity was filed by the Local Union officers and one staff representative of the International Union in the Superior Court of the Commonwealth of Massachusetts in and for Worcester County. The complaint (R. 1) alleged that the plaintiffs "fairly and adequately represent the interests of the entire membership" of the Local and the International, and after setting forth essentially, the facts described above asked that the court declare the agreement valid and binding, enjoin the company from terminating or violating it, and require the company to account to the employees for all money due them.

On September 17, the company filed a Demurrer and Answer to the complaint (R. 40) in which it raised, in addition to other defenses, the contention that the court lacked jurisdiction because Section 301 of the Labor Management Relations Act conferred exclusive jurisdiction over actions to enforce collective bargaining agreements on the federal courts. The court overruled the demurrer (R. 44) and referred the case to trial before a Master.

The Master's Report (R. 45), after an extensive review of the evidence, found that the company's negotiating committee had both actual and apparent authority to negotiate an agreement with the union, and that the agreement which had been reached, drafted, ratified, executed, and implemented was binding on the company.

The court overruled the company's objections to the Master's Report and motion to dismiss for lack of jurisdiction. It entered a decree adjudging the agreement "valid and binding on the parties thereto," and awarding back pay

to each of the members of the class represented by the plaintiffs in accordance with a stipulation entered into by the parties. (R. 58).

On appeal, the decision was affirmed by the Supreme Judicial Court of Massachusetts. On the question of jurisdiction, the court held:

> "We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in equity in State courts. The case principally relied upon, *Textile Wkrs.* v. *Lincoln Mills,* 353 U.S. 448, does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to the abdication of the hitherto undoubted jurisdiction of our own courts. . . ." (R. 69-70).

The company filed its petition for certiorari in this Court on January 9, 1961. The sole question raised in that petition was "whether Congress, in enacting the Labor Management Relations Act of 1947 . . . pre-empted to the exclusive jurisdiction of the federal courts that field of litigation involving violations of collective bargaining agreements when interstate commerce would be affected thereby. . . ." (pet. for cert. 2). Certiorari was granted on February 20, 1961. 365 U.S. 809.

SUMMARY OF ARGUMENT

I—The sole question in this case is whether state courts have jurisdiction over actions to enforce collective bargaining agreements which could also be enforced in federal court under § 301, not what law is applicable in such cases. It is clear that the same substantive law must govern re-

gardless of the court in which the case is tried, and this Court has held that "the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957).

From the earliest days of the Republic, state courts have had concurrent jurisdiction to entertain federal causes of action and to enforce federal rights. While Congress has the power to confer exclusive jurisdiction on the federal courts, this power has been sparingly exercised. When Congress intends to create exclusive federal jurisdiction it ordinarily does so expressly. In the absence of such an express provision, it is generally presumed that a statute creating federal court jurisdiction does not divest state courts of their traditional concurrent jurisdiction.

II—Nothing in the language, history, or purpose of § 301 indicates any intention to preclude state courts from taking jurisdiction over actions to enforce collective bargaining agreements. On its face, the statute simply confers jurisdiction on the federal courts, without any suggestion that such jurisdiction is to be exclusive. The purposes of § 301, as reflected in the legislative history, were to make collective agreements "valid, binding and enforceable," to provide a forum in which unions could sue and be sued as entities without the common law impediments to suits by or against unincorporated associations, and to assure that collective agreements would be interpreted and enforced in accordance with federal labor policy. Implementation of these purposes does not require divesting the state courts of jurisdiction, and there is no basis for assuming that Congress intended to do so.

The cases holding that neither state nor federal courts may act in the area over which the NLRB has jurisdiction are not relevant to the issue in the present case. As to that area, "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply

law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal . . ." *Garner* v. *Teamsters Union*, 346 U.S. 485, 490 (1953). But Congress specifically decided not to make the violation of a collective agreement an unfair labor practice, and decided instead to leave such matters to "the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42 (1947).

To hold that state courts have concurrent jurisdiction would not lead to conflicting results or forum shopping so long as state courts are required to apply federal law and federal policy. If this Court holds, for example, as we believe it should, that the Norris-LaGuardia Act precludes the issuance of an injunction against a strike in an action brought in federal court under § 301, the same limitation would have to be applied if such an action were brought in state court. While Norris-LaGuardia in terms only limits the jurisdiction of the federal courts, it also embodies a basic element of substantive federal labor policy which the state courts would be obliged to follow.

In short, the Congressional intention to make federal labor policy applicable in actions to enforce collective bargaining agreements does not require a holding that federal jurisdiction under § 301 is exclusive. It simply requires that state courts adhere to federal policy in any action which could have been brought in federal court under § 301.

III—The issues involved in No. 50, *Local 174, Teamsters* v. *Lucas Flour Co.*, which is scheduled for argument together with the present case, are related to, but distinct from, those involved here. In that case, no question was raised as to the state court's jurisdiction over the breach of contract claim. The sole question presented is whether the substantive principles applied by the court in deciding that claim were erroneous as a matter of federal law.

ARGUMENT

I—EXCEPT IN THOSE AREAS WHERE CONGRESS HAS SPECIFICALLY PROVIDED THAT THE FEDERAL COURTS SHALL HAVE EXCLUSIVE JURISDICTION, STATE COURTS HAVE ALWAYS HAD CONCURRENT JURISDICTION TO ENTERTAIN FEDERAL CAUSES OF ACTION AND ENFORCE FEDERAL RIGHTS

It is necessary, at the outset, to emphasize that the question in this case is whether state courts have concurrent jurisdiction with the federal courts of actions which come within the coverage of § 301 of the Labor Management Relations Act, not what law is applicable in such cases. The latter question was settled in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 (1957), in which this Court held that "the substantive law to apply in suits under §301(a) is federal law, which the courts must fashion from the policy of our national labor laws." 353 U.S. at 456. It follows necessarily from that decision that if state courts have jurisdiction over actions which could be brought in federal court under § 301, they must apply federal, not state, law. The rights and duties of the parties to any collective bargaining agreement must be determined in accordance with one, not two bodies of law, and under familiar principles federal law supersedes any state law dealing with the same subject matter.[1]

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[1] We assume, with Petitioner, that the federal right to enforcement of the collective bargaining agreement here could have been vindicated by a suit in a federal district court, despite the decision of this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U.S. 437 (1955). The vitality of *Westinghouse* is doubtful in the light of this Court's decision in *Lincoln Mills*. There was no opinion of the Court in *Westinghouse*, and three of the six Justices who concurred in the result did so on grounds which were overruled in *Lincoln Mills*—that state, not federal, law was applicable in suits under Section 301 and that this gave rise to constitutional problems which could only be avoided by construing the statute narrowly. 348 U.S. 439 (opinion of Mr. Justice Frankfurter, concurred

Of course, this Court recognized in *Lincoln Mills* that "state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate federal policy." But it also pointed out that "any state law applied . . . will be absorbed as federal law. . . ." Thus it is clear that state law, *qua* state law, has no bearing on collective bargaining agreements in industries affecting commerce. Those agreements are governed by federal law just as surely as if Congress had enacted a complete and detailed code governing their interpretation and enforcement.

We state these basic propositions not because they are in any way disputed in this case, but because we do not want our position to be misunderstood. We do not contend that state substantive law has any application to cases such as the one now before the court. We contend simply that Congress did not intend, when it authorized the enforcement of collective bargaining agreements in federal courts pursuant to federal law, to divest the state courts of concurrent jurisdiction to enforce those agreements pursuant to federal law.

From the earliest days of the Republic, state courts have entertained federal causes of action and enforced federal rights. While Congress has the power to confer exclusive jurisdiction on the federal courts, that power has been sparingly exercised.

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in by Justices Burton and Minton). These Justices indicated that if the constitutional difficulties were not present "we might be disposed to read Section 301 as allowing the union to sue in this case." 348 U.S. at 459. Since the constitutional difficulty has now been resolved, we believe the result in *Westinghouse* would no longer follow.

In any event, the suit here was not solely to enforce "uniquely personal rights" of individual employees, but to establish the validity of the entire collective bargaining agreement. We do not read *Westinghouse* as requiring, in such a situation, a severance of the personal rights of employees from the larger cause of action, which necessarily includes them. See *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). But see *United Steelworkers* v. *New Park Mining Co.*, 273 F. 2d 352 (10th Cir. 1959).

The first Judiciary Act of 1789 expressly defined the areas over which federal courts were to have exclusive jurisdiction, leaving all other federal court jurisdiction concurrent with the state courts. 1 Stat. 73. Moreover, state courts had—and still have—exclusive jurisdiction over actions based on federal law over which the federal courts simply have not been given jurisdiction. The Judiciary Act of 1789 did not establish any general jurisdiction in the federal courts over actions arising under the laws of the United States, and even today such jurisdiction only exists if the amount in controversy exceeds $10,000. 28 U.S.C. § 1331. Thus, there have always been, and still are, federal rights which not only are enforceable in the state courts, but are enforceable *solely* in state courts.

In No. 82 of the Federalist Papers, Hamilton, in discussing the relationship between state and federal courts, begins with the premise that the Constitution was not intended to take away the pre-existing jurisdiction of state courts. He then goes on to state the following:

> "But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes, of which the state courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be *peculiar* to, the constitution to be established: For not to allow the state courts a right of jurisdiction in such cases can hardly be considered as the abridgement of a pre-existing authority. I mean not therefore to contend that the United States, in the course of legislation upon the objects entrusted to their direction, may not commit the decision of causes arising upon a particular regulation, to the federal courts solely, if such a measure should be deemed expedient; but I hold that the state courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal; and I am even of opinion, that in every case in which they were not expressly excluded

by the future acts of the national legislature, they will, of course, take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power, and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases, lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the state governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the state courts would have a concurrent jurisdiction in all cases arising under the laws of the union, where it was not expressly prohibited."

Hamilton's analysis has been consistently followed by this Court. See *Houston* v. *Moore*, 5 Wheat. 1, 25-27 (1820); *Claflin* v. *Houseman*, 93 U.S. 130 (1876); *Robb* v. *Connolly*, 111 U.S. 624 (1884); *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239 (1942). As Mr. Justice Frankfurter stated in his concurring opinion in *Brown* v. *Gerdes*, 321 U.S. 178, 188 (1944):

"Since 1789, rights derived from federal law could be enforced in state courts unless Congress confined their enforcement to the federal courts. This has been so precisely for the same reason that rights created by the British Parliament or by the Legislature of Vermont could be enforced in New York courts. Neither Congress nor the British Parliament nor the Vermont Legislature has power to confer jurisdiction upon the New York courts. But the jurisdiction conferred upon them by the only authority that has power to create

them and to confer jurisdiction upon them—namely the law-making power of the State of New York—enables them to enforce rights no matter what the legislative source of the right may be. . . ."

Congress has, of course, conferred exclusive jurisdiction in the federal courts over certain specific kinds of actions. Although there are a few situations where exclusive jurisdiction has been held to be implied, *e.g.*, *General Investment Co.* v. *Lake Shore Mich. So. Ry.*, 260 U.S. 261 (1922) (Sherman and Clayton Acts), in most cases when Congress desires to create exclusive federal jurisdiction it does so expressly. *E.g.*, Securities Exchange Act, 15 U.S.C. § 78aa; Natural Gas Act, 15 U.S.C. § 717u; 28 U.S.C. § 1333 (admiralty and prize), § 1334 (bankruptcy), § 1338 (patent and copyright). Thus, in the absence of an express provision to the contrary, it is generally presumed that a statute creating federal court jurisdiction does not divest the concurrent jurisdiction of state courts. See Note, *Exclusive Jurisdiction of the Federal Courts in Private Civil Actions*, 70 Harv. L. Rev. 509 (1957).

General presumptions, of course, do not necessarily decide particular cases. In each case the answer must be given in terms of an interpretation of the particular jurisdictional statute involved. It is therefore necessary to examine the language, purpose, and legislative history of Section 301 to determine whether there is any basis for inferring a Congressional intention to make the jurisdiction of federal courts over actions to enforce collective bargaining agreements exclusive. To this inquiry we now turn.

II—NOTHING IN THE LANGUAGE, HISTORY, OR PURPOSE OF SECTION 301 PRECLUDES STATE COURTS FROM TAKING JURISDICTION OVER ACTIONS TO ENFORCE COLLECTIVE BARGAINING AGREEMENTS.

On its face, § 301 simply gives the federal district courts jurisdiction over "suits for violation of contracts between

an employer and a labor organization representing employees in an industry affecting commerce. . . ." It does not state or even suggest that such jurisdiction shall be exclusive.

Admittedly, the language itself is not necessarily controlling, although it is significant, as we have seen, that most statutes which confer exclusive jurisdiction on the federal courts expressly so state. The meaning of § 301, like any other statute, must be ascertained not only from its text but from its background and purpose.

While it is true, as petitioner points out and as this Court stated in *Lincoln Mills*, that the legislative history of § 301 is in many respects "cloudy and confusing," the basic purpose of the legislation is nevertheless quite clear. Having established a far-reaching and complex federal statute to encourage and regulate the process of collective bargaining, Congress believed it was also necessary to provide that the "bargain" itself, *i.e.*, the collective agreement, be "valid, binding and enforceable." In the words of the Senate Committee, "Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step." S. Rep. No. 105, 80th Cong., 1st Sess. p. 17 (1947). In the Senate Bill, this objective was to be realized by a provision making breach of a collective bargaining agreement an unfair labor practice subject to the jurisdiction of the National Labor Relations Board, S. 1126, 80th Cong., 1st Sess. §§ 8(a)(6), 8(b)(5), as well as a provision giving jurisdiction to enforce collective agreements to the federal courts. *Id.* § 301(a). In Conference, however, it was decided to make collective bargaining agreements enforceable only in the courts. "Once parties have made a collective bargaining contract," the Conference report stated, "the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42 (1947).

One reason that Congress considered it necessary to give federal courts jurisdiction over actions to enforce collective agreements was the fact that in some states it is procedurally difficult to sue unincorporated associations. See, *e.g.*, 93 Cong. Rec. 3839 (statement of Senator Taft). Thus, in addition to the jurisdictional grant of § 301(a), Congress provided in § 301(b) that "any labor organization" could be sued in the federal courts "as an entity," and that judgments against labor organizations in the federal courts should be enforceable only against "the organization as an entity and against its assets. . . ."

The basic purposes of § 301, then, were to make collective agreements legally binding, to provide for their enforcement in accordance with "the usual processes of the law," and to eliminate the common law impediments to suing unions. Although there was no extensive discussion in Congress as to whether collective agreements were to be enforced in accordance with federal or state law, this Court quite correctly held in *Lincoln Mills* that the intention of Congress could only be properly carried out if § 301 is interpreted as requiring the application of federal substantive law, based on federal labor policy, in cases arising under it. In that sense, this was also part of the "intention" of Congress.

Petitioner's brief interprets the legislative history in much the same way. It states that "the entire legislative history of Section 301 indicates a desire on the part of Congress to have the parties to a collective bargaining agreement be bound by that agreement and to create a remedy to enforce obligations under that agreement," and that "Congress was aware of the lack of uniformity in state laws and desired to afford a uniform remedy available to all parties regardless of state affiliations, against violations of collective bargaining agreements. See H.R. Rep. No. 245, 80th Cong., First Sess., pp. 45-46." (Pet. Br. 11)

Implementation of these purposes simply does not re-

quire divesting the state courts of jurisdiction over actions to enforce collective bargaining agreements, and there is no evidence that Congress intended to do so. Whenever Congress establishes a federal right and gives jurisdiction to a federal court to enforce that right, the intention is to "afford a uniform remedy, available to all parties." Yet in most instances, as we have seen, Congress has not divested state court jurisdiction to enforce federal rights. On the contrary, it has been satisfied to give plaintiffs the right, if they choose, to bring suit in the federal court, defendants the right, if they are sued in state court, to remove to federal court (28 U.S.C. § 1441) and all parties the right to seek review in the Supreme Court of any adverse ruling by the highest court of the state. 28 U.S.C. § 1257(3). This is the normal pattern. What basis is there for the view that Congress intended to depart from it in the case of § 301?

Petitioner argues that federal court jurisdiction under § 301 should be considered exclusive for the same reasons that the jurisdiction of the National Labor Relations Board is exclusive in the areas where it has jurisdiction. The two situations, however, are not parallel. As this Court stated with respect to the matters over which the NLRB has been given jurisdiction:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and

attitudes toward labor controversies. . . ." *Garner* v. *Teamsters Union*, 346 U.S. 485, 490 (1953).

As to violations of collective bargaining agreements, however, Congress made a contrary decision. After considering making them an unfair labor practice subject to NLRB jurisdiction, Congress rejected that alternative in favor of leaving the enforcement of collective agreements "to the usual processes of the law." Thus the cases dealing with the exclusive jurisdiction of the NLRB are simply not relevant.[2]

Petitioner also argues that if the purpose of § 301 was to make collective agreements subject to a uniform federal law, as this Court held in *Lincoln Mills*, then it is necessary to hold that federal court jurisdiction is exclusive in order to carry out this intention. This argument, of course, could be applied with equal force to every situation in which the

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[2] In the final section of Petitioner's brief (pp. 21-26) it is argued that even if federal court jurisdiction under Section 301 is not exclusive in every case, it must be considered exclusive where the alleged breach of contract is also an unfair labor practice, and that this is such a case. The argument is based on the assumption that in the absence of § 301, any breach of contract suit involving conduct which is arguably an unfair labor practice would be within the exclusive jurisdiction of the NLRB, and that if § 301 creates an exception it is one which applies only to the federal courts.

The argument is untenable. It is well settled that neither federal nor state courts have jurisdiction to remedy unfair labor practices. But an obligation assumed by a party to a contract is completely separate and apart from an obligation imposed upon him by law, even though the same conduct may violate both. Thus, enforcement by a court of contract obligations does not interfere with the exclusive jurisdiction of the NLRB to remedy unfair labor practices, not because of any statutory "exception" to the exclusive jurisdiction of the NLRB, but simply because Congress decided to exclude the enforcement of contract obligations from the Board's jurisdiction.

In this connection, § 301 is to be contrasted with § 303, 29 U.S.C. § 187, which does create an exception to the Board's exclusive jurisdiction by allowing suits for damages for certain unfair labor practices. That Section specifically provides that such suits can be brought in federal court "or in any other court having juisdiction of the parties."

federal courts have jurisdiction to enforce federal law. In every area in which Congress has legislated, one of its objectives has been to establish a uniform body of law. Yet, as we have seen, Congress has permitted the overwhelming number of federally-created rights to be enforced either in federal courts or in state courts. The view that exclusive federal jurisdiction is necessary to maintain uniform federal law is therefore hardly one which can be attributed to Congress. And as Judge Traynor of the California Supreme Court stated, in rejecting precisely the argument made by Petitioner here:

> "The possibility of conflict between state and federal courts is no greater than the possibility of conflict among the federal courts themselves, with uniformity ultimately dependent in either case on review by the United States Supreme Court." *McCarroll* v. *Los Angeles Dist. Council of Carpenters,* 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. denied,* 355 U.S. 932 (1958).

Virtually every court which has had occasion to consider the question has held that § 301 does not divest state courts of jurisdiction over actions to enforce collective bargaining agreements (See citations in opinion of court below, R. 70). Petitioner has been able to find only two opinions intimating to the contrary, neither of which constitutes a square holding on the issue. *Association of Westinghouse Employees* v. *Westinghouse Elec. Corp.,* 210 F. 2d 623, 629-30, at n. 16 (3d Cir. 1954) (stating that § 301 is "seemingly" exclusive); *International Plainfield Motor Co.* v. *Local 343, UAW,* 123 F. Supp. 683, 692 (D.N.J. 1954).[3]

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[3] Petitioner's reliance on *Fay* v. *American Cystoscope Makers,* 98 F. Supp. 278 (S. D. N. Y. 1951) is misplaced. By refusing to remand to the state court an action for breach of a collective agreement which had been removed by the defendant to federal court, *Fay* necessarily held that the state court from which the action was removed had concurrent jurisdiction, since it is well established that an action improperly brought in state court cannot be removed to a federal court. *Gen-*

Petitioner argues that permitting state courts to take jurisdiction would lead to anomalous results, pointing to *Swift & Co.* v. *United Packinghouse Workers*, 177 F. Supp. 511 (D. Colo. 1959) as an example. In that case, an action for damages and an injunction for breach of a no-strike clause in a collective bargaining agreement was brought in state court. The union removed the case to federal court. On motion to remand, the court refused to remand the claim for damages but remanded the claim for an injunction, on the ground that the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, deprived the federal court of jurisdiction to enjoin a strike.

This result is anomalous only if it is assumed that the state court, on remand, would be free to grant the injunction. We do not accept that assumption. There is presently pending before this Court the question of whether Norris-LaGuardia prevents federal courts from enjoining strikes in actions brought under § 301. *Chauffeurs Local 795* v. *Yellow Transit Freight Lines, Inc.* (This Term, No. 13). If the Court holds in that case, as we believe it should, that Norris-LaGuardia applies, it would seem to follow that state courts as well as federal courts should be prevented from enjoining strikes which are alleged to be in breach of a collective agreement. Although the Norris-LaGuardia Act in terms only limits the power of the federal courts, it also embodies a very basic and long established substantive federal policy against the use of injunctions in labor disputes. See *United States* v. *Hutcheson*, 312 U.S. 219 (1941). If federal substantive law, fashioned "from the policies of our national labor laws," is to be applied in state as well as federal courts, one element of that federal law must be the prohibition of injunctions against strikes. See *The Supreme Court, 1956 Term*, 71 Harv. L. Rev. 83, 178 (1957).

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eral Inv. Co. v. *Lake Shore & Mich. So. Ry.*, 260 U.S. 261, 288 (1922).

It is true that the question of remedy is generally considered "procedural" rather than "substantive." See *Pusey & Jones Co.* v. *Hanssen*, 261 U.S. 491 (1923). But this Court has long recognized that those categories have different meanings in different contexts:

> "Matters of 'substance' and matters of 'procedure' are much talked about in the books as though they defined a great divide cutting across the whole domain of law. But, of course, 'substance' and 'procedure' are the same keywords to very different problems. Neither 'substance' nor 'procedure' represents the same invariants. Each implies different variables depending upon the particular problem for which it is used. See *Home Ins. Co.* v. *Dick*, 281 U.S. 397, 409. And the different problems are only distantly related at best, for the terms are in common use in connection with situations turning on such different considerations as those that are relevant to questions pertaining to *ex post facto* legislation, the impairment of the obligations of contract, the enforcement of federal rights in the State courts and the multitudinous phases of the conflict of laws. . . ." *Guaranty Trust Co.* v. *York*, 326 U.S. 99, 108 (1945).

If § 301 was intended to make federal labor policy applicable to actions for breach of a collective agreement, then it must follow that the federal policy against enjoining strikes must apply in those actions, whether brought in state or in federal court.

The fallacy of petitioner's entire argument we submit, is the assumption that the only way to assure proper implementation of federal labor policy in actions for breach of collective bargaining agreements is to confine such actions to the federal court. There is simply no indication in the language or legislative history of § 301 to indicate that Congress shared this assumption.

Both federal and state courts, of course, make errors. But with proper guidance from this Court those errors can be minimized without depriving state courts of their traditional concurrent jurisdiction to enforce federal law.

III—THE RELATIONSHIP OF THIS CASE TO THE *LUCAS FLOUR CO.* CASE.

Since the Court has set this case for argument with *Local 174, Teamsters* v. *Lucas Flour Co.*, No. 50, we will comment briefly on the relationship between the issues involved in the two cases.

In *Lucas Flour*, an employer brought suit in a state court against a union for damages arising out of a strike. A judgment in favor of the plaintiff was affirmed in the Supreme Court of Washington on two alternative theories of liability: (1) that the strike constituted "tortious interference" with the plaintiff's business, and (2) that the strike violated the collective bargaining agreement in effect between the parties, even though the agreement did not contain a no-strike clause. The court appeared to rely on state substantive law for both theories, despite the fact that the enterprise involved was one subject to the Labor Management Relations Act.

As to the tort theory, the question presented is whether the conduct which the state court held to be wrongful is within the area regulated by the National Labor Relations Act and subject to the exclusive jurisdiction of the NLRB. This question does not bear on any issue of the present case.

As to the breach of contract claim, the only question presented is whether federal substantive law must be applied in any action which could be brought in a federal court under § 301, and if so whether the result reached below was erroneous as a matter of federal substantive law. The question of whether the jurisdiction of the federal courts is exclusive under § 301 was not raised.

Thus, the issues in the two cases are related but distinct. In the present case, the merits are not in issue, only the juris-

diction of the state court. In *Lucas Flour*, the jurisdiction of the state court over the breach of contract claim is not in issue, only the merits.

A decision upholding petitioner's contention in this case would require the reversal of *Lucas Flour* on jurisdictional grounds not presented by the petition in that case. A decision here affirming the judgment below would leave the issues presented and argued in *Lucas Flour* to be decided by the Court.

CONCLUSION

For the reasons stated, the judgment of the Supreme Judicial Court of Massachusetts should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 33.—October Term, 1961.

Charles Dowd Box Co., Inc., Petitioner, v. John F. Courtney, et al., etc. | On Writ of Certiorari to the Superior Court of Massachusetts.

[February 19, 1962.]

Mr. Justice Stewart delivered the opinion of the Court.

Section 301 (a) of the Labor Management Relations Act of 1947 provides:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." [1]

[1] The remaining provisions of § 301 are as follows:

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization

The sole question presented by this case is whether this federal statute operates to divest a state court of jurisdiction over a suit for violation of a contract between an employer and a labor organization.

The petitioner is an employer engaged in an industry affecting commerce as defined in the Labor Management Relations Act of 1947. The United Steelworkers of America, an international union, was the collective bargaining representative of the petitioner's production and maintenance employees, organized in Local 5158. A few weeks before the expiration of a collective bargaining agreement in 1957, negotiations were initiated between representatives of the union and of the petitioner with respect to proposals which the union had submitted for a new agreement. After a number of negotiating sessions, a "Stipulation" was signed by representatives of each party, continuing in effect many provisions of the old agreement, but providing for wage increases and making other changes with respect to holidays and vacations. The terms of the "Stipulation" were later embodied in a draft of a proposed new agreement. The petitioner originally announced to its employees that it would put into effect the wage changes and other provisions covered by the "Stipulation" and draft agreement, but a few weeks later notified its employees of its intention to terminate

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(1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." 29 U. S. C. § 185, 61 Stat. 156.

these changes and return "to the rates in effect as of May 18, 1957." It was the petitioner's position that its bargaining representatives had acted without authority in negotiating the new agreement, and that the union had been so advised before any contract had actually been concluded.

The present action was then brought in the Superior Court of Massachusetts for Worcester County by the respondents, local union officers and a staff representative of the International Union. The complaint alleged that the plaintiffs "fairly and adequately represent the interests of the entire membership" of the union and Local 5158, and asked for a judgment declaring that there existed a valid and binding collective bargaining agreement, for an order enjoining the company from terminating or violating it, and for an accounting and damages. Responding to the complaint, the petitioner interposed several defenses, among them the contention that, by reason of § 301 (a) of the Labor Management Relations Act, the state court had no jurisdiction over the controversy. The trial court rejected this attack upon its jurisdiction, determined on the merits that the collective bargaining agreement was "valid and binding on the parties thereto," and entered a money judgment in conformity with the wage provisions of the agreement.

The Supreme Judicial Court of Massachusetts affirmed, expressly ruling that § 301 (a) has not made the federal courts the exclusive arbiters of suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. As Chief Justice Wilkins put it, "We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in

equity in State courts. The case principally relied upon by the defendant, Textile Wkrs. Union of America v. Lincoln Mills, 353 U. S. 448, . . . does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to an abdication of the hitherto undoubted jurisdiction of our own courts." [2] Certiorari was granted to consider the important question of federal law thus presented. 365 U. S. 809. We agree with the Supreme Judicial Court of Massachusetts that the courts of that Commonwealth had jurisdiction in this case, and we accordingly affirm the judgment before us.

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[2] — Mass. —, —, 169 N. E. 2d 885, 887. As pointed out by the Massachusetts court, its view is in accord with other state court decisions. *McCarroll* v. *Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 57–60, 315 P. 2d 322, 328–330; *Connecticut Co.* v. *Division 425, Street & Electric Railway Workers*, 147 Conn. 608, 164 A. 2d 413; *Harbison-Walker Refractories Co.* v. *Local 702, United Brick & Clay Workers* (Ky. Ct. App.), 339 S. W. 2d 933; *Miller* v. *Kansas City Power & Light Co.* (Mo. App.), 332 S. W. 2d 18; *Anchor Motor Freight N. Y. Corp.* v. *Local 445, Teamsters Union*, 5 App. Div. 2d 869, 171 N. Y. S. 2d 511; *Steinberg* v. *Mendel Rosenzweig Fine Furs*, 9 Misc. 2d 611, 167 N. Y. S. 2d 685; *General Electric Co.* v. *United Auto Workers*, 93 Ohio App. 139, 153–156, 108 N. E. 2d 211, 220–223; *Local Lodge No. 774, Int'l Assn. of Machinists* v. *Cessna Aircraft Co.*, 186 Kan. 569, 352 P. 2d 420; *Local 8, Longshoremen's Union* v. *Harvey Aluminum*, — Ore. —, 359 P. 2d 112; *Springer* v. *Powder Power Tool Corp.*, 220 Ore. 102, 348 P. 2d 1112; *Philadelphia Marine Trade Assn.* v. *Local 1291, Longshoremen's Assn.*, 382 Pa. 326, 115 A. 2d 733; *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 57 Wash. 2d 95, 356 P. 2d 1; *Clark* v. *Hein-Werner Corp.*, 8 Wis. 2d 264, 99 N. W. 2. 132, 100 N. W. 2d 317. But at least two federal courts have expressed the view that their jurisdiction under § 301 (a) might be exclusive. *Association of Westinghouse Employees* v. *Westinghouse Elec. Corp.*, 210 F. 2d 623, 629–630, note 16, aff'd 348 U. S. 437; *International Plainfield Motor Co.* v. *Local 343, United Auto Workers*, 123 F. Supp. 683, 692 (D. N. J.).

It has not been argued, nor could it be, that § 301 (a) speaks in terms of exclusivity of federal court jurisdiction over controversies within the statute's purview. On its face § 301 (a) simply gives the federal district courts jurisdiction over suits for violation of certain specified types of contracts. The statute does not state nor even suggest that such jurisdiction shall be exclusive. It provides that suits of the kind described "may" be brought in the federal district courts, not that they must be.

The petitioner points out, however, that this Court held in *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448, that § 301 (a) is more than jurisdictional—that it authorizes federal courts to fashion, from the policy of our national labor laws, a body of federal law for the enforcement of agreements within its ambit. The Court recognized in that case that "state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy," but emphasized that "[a]ny state law applied . . . will be absorbed as federal law . . . ." 353 U. S., at 457.

It is argued that the rationale of *Lincoln Mills* would be frustrated if state courts were allowed to exercise concurrent jurisdiction over suits within the purview of § 301 (a). The task of formulating federal common law in this area of labor management relations must be entrusted exclusively to the federal courts, it is said, because participation by the state courts would lead to a disharmony incompatible with the *Lincoln Mills* concept of an all-embracing body of federal law. Only the federal judiciary, the argument goes, possesses both the familiarity with federal labor legislation and the monolithic judicial system necessary for the proper achievement of the creative task envisioned by *Lincoln Mills*. An analogy is drawn to our decisions which have recognized the necessity of withdrawing from the state courts

jurisdiction over controversies arguably subject to the jurisdiction of the National Labor Relations Board.[3]

Whatever the merits of this argument as a matter of policy, we find nothing to indicate that Congress adopted such a policy in enacting § 301. The legislative history of the enactment nowhere suggests that, contrary to the clear import of the statutory language, Congress intended in enacting § 301 (a) to deprive a party to a collective bargaining contract of the right to seek redress for its violation in an appropriate state tribunal.

We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule.[4] This Court's approach to the question of whether Congress has ousted state courts of jurisdiction was enunciated by Mr. Justice Bradley in *Claflin* v. *Houseman*, 93 U. S. 130, and has remained unmodified through the years. "The general question, whether State courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws, and treaties of the United States, has been elaborately discussed, both on the bench and in published treatises . . . [and] the result of these discussions has, in our judgment, been . . . to affirm the jurisdiction, where it is not excluded by express provision, or by incompatibility in its exercise arising

[3] See, *e. g.*, *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236.

[4] Indeed, Congress has so arranged the limited jurisdiction of federal courts that some federal laws can be enforced only in the state courts. See, *e. g.*, 28 U. S. C. § 1331, conferring jurisdiction upon federal courts of civil actions arising under the Constitution, laws, or treaties of the United States only if the matter in controversy exceeds the sum or value of $10,000.

from the nature of the particular case." 93 U. S., at 136. See *Robb* v. *Connolly*, 111 U. S. 624; *Second Employers' Liability Cases*, 223 U. S. 1, 56–59; *St. Louis, B. & M. R. Co.* v. *Taylor*, 266 U. S. 200; *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 245; *Brown* v. *Gerdes*, 321 U. S. 178, 188 (concurring opinion).[5] To hold that § 301 (a) operates to deprive the state courts of a substantial segment of their established jurisdiction over contract actions would thus be to disregard this consistent history of hospitable acceptance of concurrent jurisdiction.

Such a construction of § 301 (a) would also disregard the particularized history behind the enactment of that provision of the federal labor law. The legislative history makes clear that the basic purpose of § 301 (a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations. Moreover, there is explicit evidence that Congress expressly intended not to encroach upon the existing jurisdiction of the state courts.

The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301 (a) reflects congressional recognition of the vital importance of assuring the enforceability of such agreements.

The direct antecedent of § 301 was § 10 of the Case bill, H. R. 4908, 79th Cong., 2d Sess., which was passed

[5] See also *Houston* v. *Moore*, 5 Wheat. 1, 25–27, and see generally The Federalist No. 82 (Hamilton).

by both Houses of the Congress, but vetoed by the President in 1946. In conferring upon the federal district courts jurisdiction over suits upon contracts made by labor organizations, that section of the Case bill contained provisions substantially the same for present purposes as the provisions of § 301 at issue in this case.*

In considering these provisions of the proposed legislation in 1946, Congress manifested its complete awareness

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*"SEC. 10. (a) Suits for violation of a contract concluded as the result of collective bargaining between an employer and a labor organization if such contract affects commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: *Provided*, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena, or other legal process upon such officer or agent shall constitute service upon the labor organization.

"(d) Any employee who participates in a strike or other interference with the performance of an existing collective bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights for such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of sections 8, 9, and 10 of the National Labor Relations Act: *Provided*, That such loss of status for such employee shall cease if and when he is reemployed by such employer."

of both the existence and the limitations of state court remedies for violation of collective agreements. A principal motive behind the creation of federal jurisdiction in this field was the belief that the courts of many States could provide only imperfect relief because of rules of local law which made suits against labor organizations difficult or impossible, by reason of their status as unincorporated associations. The discussion between the supporters and opponents of this provision of the Case bill centered primarily on the nature and availability of existing state remedies. As a result, both factions collected and presented comprehensive data respecting the laws of the various States as to the status of labor organizations as legal entities. See, *e. g.*, S. Rep. No. 1177, 79th Cong., 2d Sess., Minority Report, pp. 10–14; 92 Cong. Rec. 5412–5415.

The bill which the Senate originally passed the following year contained a provision making a breach of a collective bargaining agreement an unfair labor practice subject to the jurisdiction of the National Labor Relations Board, S. 1126, 80th Cong., 1st Sess., §§ 8 (a)(6), 8 (b)(5), as well as a provision conferring jurisdiction upon the federal courts over suits for violation of collective agreements. In conference, however, it was decided to make collective bargaining agreements enforceable only in the courts. "Once parties have made a collective bargaining contract," the conference report stated, "the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 42.

The report which accompanied the bill passed by the House of Representatives in 1947 explicitly acknowledged that the proposed § 301 was a slightly recast version of § 10 of the Case bill. H. R. Rep. No. 245, 80th Cong., 1st

Sess., p. 45. The record of the congressional debates on § 301 of the 1947 Act reflects the same concern with the adequacy of the laws of the various States as had been expressed the previous year in the discussion of § 10 of the Case bill. The Minority Report in the House in 1947 again discussed the availability of relief, the alternative means of recovery, and the scope of remedy in suits against labor organizations under the laws of the various States. H. R. Rep. No. 245, 80th Cong., 1st Sess., pp. 108–109. The Senate Report reproduced verbatim the detailed analysis of state procedural law which had been contained in the Senate Minority Report on the 1946 legislation. S. Rep. No. 105, 80th Cong., 1st Sess., pp. 15–18.

The clear implication of the entire record of the congressional debates in both 1946 and 1947 is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations. There seems to have been explicit mention of the question only once—in the Senate debate over § 10 of the 1946 bill. A spokesman for the bill, Senator Ferguson, stated unequivocally that state court jurisdiction would not be ousted by enactment of the federal law:

> "Mr. FERGUSON. Mr. President, there is nothing whatever in the now-being-considered amendment which takes away from the State courts all the present rights of the State courts to adjudicate the rights between parties in relation to labor agreements. The amendment merely says that the Federal courts shall have jurisdiction. It does not attempt to take away the jurisdiction of the State

courts, and the mere fact that the Senator and I disagree does not change the effect of the amendment.

"Mr. MURRAY. But it authorizes the employers to bring suit in the Federal courts, if they so desire.

"Mr. FERGUSON. That is correct. That is all it does. It takes away no jurisdiction of the State courts." 92 Cong. Rec. 5708.

Although the record of the 1947 debates contains no explicit statement of such precise relevance as Senator Ferguson's remarks in 1946, the entire tenor of the 1947 legislative history confirms that the purpose of § 301, like its counterpart in the Case bill, was to fill the gaps in the jurisdictional law of some of the States, not to abolish existing state court jurisdiction. For example, Senator Ball, one of the Floor Leaders for the bill, stated:

> "[W]e give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. It does not go beyond that. As a matter of law, I think they have that right, now, but because unions are voluntary associations, the common law in a great many States requires service on every member of the union, which is very difficult; . . ." 93 Cong. Rec. 5014.[7]

This basic purpose of § 301 is epitomized in the Senate Report: "It is apparent that until all jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements." S. Rep. No. 105, 80th Cong., 1st Sess., p. 17. It is obvious that Congress did not intend this remedial measure to destroy the foundation upon which it was built.

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[7] See also the remarks of Senator Smith, 93 Cong. Rec. 4281.

This Court, in holding that the Labor Management Relations Act of 1947 operates to withdraw from the jurisdiction of the States controversies arguably subject to the jurisdiction of the National Labor Relations Board, has delineated the specific considerations which led to that conclusion:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedure was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490.

By contrast, Congress expressly rejected that policy with respect to violations of collective bargaining agreements by rejecting the proposal that such violations be made unfair labor practices. Instead, Congress deliberately chose to leave the enforcement of collective agreements "to the usual processes of the law."

It is implicit in the choice Congress made that "diversities and conflicts" may occur, no less among the courts of the eleven federal circuits, than among the courts of the several States, as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke. But this not necessarily unhealthy prospect is no more than the usual consequence

of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law. To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Court.[6]

Affirmed.

MR. JUSTICE BLACK concurs in the result.

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[6] In the course of argument at the Bar two questions were discussed which are not involved in this case, and upon which we expressly refrain from intimating any view—whether the Norris-LaGuardia Act might be applicable to a suit brought in a state court for violation of a contract made by a labor organization, and whether there might be impediments to the free removal to a federal court of such a suit. The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court. See *McCarroll* v. *Los Angeles Dist. Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322. For that matter, we have not yet ruled on the effect of Norris-LaGuardia upon the jurisdiction of *federal* courts in this area. Compare *Local 795, Teamsters Union* v. *Yellow Transit Freight Lines, Inc.*, 282 F. 2d 345, certiorari granted, 364 U. S. 931 (No. 13, Oct. Term 1961) with *Sinclair Ref. Co.* v. *Atkinson*, 290 F. 2d 312, certiorari granted, 368 U. S. 937 (No. 434, Oct. Term 1961). And quite obviously we have not yet considered the various problems concerning removal under 28 U. S. C. § 1441. See *Swift & Co.* v. *United Packinghouse Workers*, 177 F. Supp. 511; *Fay* v. *American Cystoscope Makers, Inc.*, 98 F. Supp. 278.